

REMARKS ON THE
ESTABLISHMENT OF A
BUSINESS COURT
IN
WEST VIRGINIA

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MR. CHAIRMAN, MEMBERS OF THE TASK FORCE:

Thank you very much for inviting me to join you for this meeting of The West Virginia Independent Commission on Judicial Reform. I also bring you greetings and support from the officers and members of the American College of Business Court Judges of which I am the Immediate Past President, in your consideration of the creation of a Business Court in your state.

Almost every state that has started a Business Court, version or Case Management Program and has prior thereto studied the sentiment and opinions of their Business Community their Bar and Bench and the experience of other states have concluded as follows:

1. Both the business and legal communities' desire an **efficient, economical, and hospitable forum for the administration of business and technology disputes in the trial courts of their state**. The key to this forum is to **assign judges who can handle cases involving complex business and technology issues competently and in a timely manner** regardless of the geographic sites of the court, the dispute, or even the parties.
2. The experience of other states that have created Business Courts initially began with a perception that such cases were not being handled satisfactorily by the general jurisdiction Trial courts in those states. These deficiencies gave impetus to the creation of specialized Business Courts in those states which have taken various forms. These specialized courts have significantly improved the efficiency with which business cases have been disposed of in those states.
3. Although there is no crisis in the handling of business and technology cases in the Trial Courts of this State, largely as a result

of enhanced and effective management of these and other complex cases there remains room for improvement. The substance of that improvement is more important than the form it might take. Therefore, the benefits that have been documented from the experience of those states and localities which have instituted "Business Courts", "Business Divisions", or "Business Case Management Programs" are substantial without reference to whether a division, as such, was required.

4. Potential Benefits of special procedures for handling of substantive business and technology disputes include:
 - a. **Specialized training and education for those judges** with experience in business and technology issues, as well as the application of specialized case management techniques and technology for the handling of these cases.
 - b. **Greater efficiency resulting from this specialized training and education of judges, clerks, and staff**, as well as the application of the most modern state-of-the-art technology to the filing and processing of these cases.
 - c. **More timely, rational, legally correct, and perhaps most importantly, predictable rulings from judges** who are better trained, educated, and comfortable in handling these cases.
 - d. **A higher rate of settlement of business and technology cases because of the increased correctness, rationality, and predictability of an identifiable group of judges** whose competence is certified by the requisite degree of judicial education and training and whose written opinions are circulated on the Internet and other available media.
 - e. **Greater efficiencies in the disposition of other types of cases** within the jurisdiction of the General Jurisdiction Trial Courts because of the increased time available to them as a result of the removal of time consuming business and technology cases from the general court docket.

Upon reflection, I think that perhaps the most significant and almost universal conclusion reached by all who have studied this is that state judiciaries should forthrightly confront the fact that the trend toward voluntary professional specialization in western societies is likely to continue well into the twenty-first century. This trend has already irreversibly manifested itself in the legal profession with the specialization of attorneys and expert witnesses. The judiciary, however, has, although not entirely, declined to join this trend. We should!

I believe that the inefficiencies and the reductions in the timeliness and quality of judicial decision-making that will inevitably result from advocates with specialized knowledge presenting cases to generalist trial judges with neither the knowledge nor the time to devote to these cases will grow to a level which is intolerable.

I venture to say that there is not a single lawyer in this room who has not, on more than one occasion in his or her practice, wished for his or her complex business or even complex tort action involving multiple parties and experts, products liability case, or other complex litigation to be assigned or not assigned to a particular judge based on that judge's level of experience and familiarity, demonstrated competence and temperament to handle the case. I'll bet some of you have even tried to benignly and of course ethically take steps within the assignment process to implement that desire.

Your Judiciary and Chief Judge can best address the prospective method of designating a judge to the Business docket in West Virginia. However, once a judge is designated, it is essential that he/she receive training and continuing education through a diversified judicial education program in multiple disciplines including law, economics, case management techniques, and use of technology in and out of the courtroom. This would be taught not just by judges and lawyers, but also a cross section of academics, economists, engineers, and scientists, etc.

An important issue for the business community and their lawyers to my surprise was what they perceived as the need for the trial judges who decide their cases to issue published written opinions which are informed, consistent, and therefore predictable. This makes business planning much easier. This has been an important element of the success of certain business courts and programs in other states. We therefore strongly recommend that trial judges designated as Program Judges be published on the website of the Judiciary and further that a Center for your Business Court be established on the judiciary's website. The utilization of the judiciary's website is recommended because it would demonstrate the state judiciary's ability to be cutting edge. In addition, it is currently the research vehicle of choice, particularly for technology companies, and is the easiest option to update. We also recommend that this same Center displayed on the judiciary's website be similarly displayed and linked on the West Virginia Bar Association, the Chamber of Commerce, and the West Virginia Department of Business and Economic Development websites. Finally ADR and Electronic Filing which I will not, in the interest of time, discuss here, are important components of any Statewide Business Court or Case Management Program.

My Final, but not necessarily parting advice today since the American College of Business Court Judges wants to continue to help in this effort is to keep a broad and diversified coalition involved in this project. The coalition should include trial lawyers, legislators, judges, business lawyers, the Governor's office, the judiciary, the business community, Executive Branch representation, and Business Organizations.

This will insure both the perception and the reality that the needs of the Courts' stakeholders will be met without doing violence to judicial independence. You must insure that and you can with a more rigorously and comprehensively trained and educated judiciary.

Finally, I urge you to utilize the expertise of and appreciate the perspective of the business people involved in this project, particularly the entrepreneurs and tech industry people. They will bring perhaps the most refreshing and important perspective to your work. Theirs is a world of rapid change brought on by not only the Internet, but by bioscience, aerospace, and the information technology industry. Successfully operating a business in that world requires the flexibility and the creativity to rapidly react and to plan in that volatile world. That in turn requires that these people be able to identify and, as much as possible, quantify risk quickly. These people need a court system whose case management system understands and accommodates their needs.

The business community's perspective is repeated almost every time there is any spirited debate, which usually occurred on issues of semantics. Their position always amounted to in substance "we do not care what you call this, i.e. a Division, a Court, or a Program. We simply want what will work. If it works and serves our unique needs for speed, economy, efficiency, integrity, and predictability in the resolution of our disputes, then let's do it and be done with it."

I agree with them. Let's do it. Any help that the American College of Business Court Judges can give you in West Virginia, we'll be here with it. Just let us know.

Thank you.